LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV1 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 145

EDWARD T. ROEHNER,

Petitioner,

—*v.*—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *et al.*,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

EDWARD T. ROEHNER
Attorney for Petitioner
136 East 57 Street
New York, N. Y. 10022

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 145

EDWARD T. ROEHNER,

Petitioner,

—*v.*—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *et al.*,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI

Petitioner respectfully requests the Court to reconsider its order denying his petition for writ of certiorari and on reconsideration to grant his petition on the following grounds not advanced in his petition.

Additional circumstances which show that to require petitioner to try this action in the Supreme Court, New York County, and to appeal to the Appellate Division, First Judicial Department, is to deprive him of due process of law.

On May 6, 1966, The New York Times announced that Mr. Justice Louis J. Capozzoli, of the Supreme Court, New York County, had been appointed to the Appellate Division, First Judicial Department. It was he who granted the Association's motion for summary judgment by an order "not rationally supportable" accompanied by an opin-

ion "it would be charitable to call * * * an aberration" (Record, p. 15).

The New York Law Journal of November 10, 1966, announced that James H. Halpin, Esq., of counsel on the respondents' brief in opposition to the petition for certiorari and attorney for the respondents in the state courts, had been appointed by the Association chairman of a committee to cooperate with the American Bar Association on the revision of the canons of ethics. Charles D. Breitel was listed as a member of the committee. He is Mr. Justice Breitel, who presided at the appeal by petitioner in the earlier action from the order granting the Association's motion for summary judgment. Mr. Justice Breitel accepted the appointment to the committee, despite the fact that he had judicial knowledge that Mr. Halpin, the chairman, had committed perjury in the prior action by petitioner against the Association (Record, p. 22, first full paragraph). Mr. Halpin was also appointed to the Judiciary Committee.

And, as stated in the petition, Presiding Justice Botein, after the affirmance by his court without opinion of the "not rationally supportable" order of Mr. Justice Capozzoli granting the Association's motion for summary judgment, received from Mr. Brownell, president of the Association, the Medal of the Association for "exceptional contributions to the honor and standing of the Bar in this community," even though Presiding Justice Botein had knowledge of Mr. Brownell's perjury in the prior action.

The elevation of Mr. Justice Capozzoli from the Supreme Court, New York County, to the Appellate Division, First Judicial Department, to which an appeal from the denial by the Supreme Court, New York County, of the motion

for change of place of trial will go, makes certain that no Justice in New York County will grant petitioner's motion for a change of place of trial. The fact that Mr. Justice Capozzoli is a member of the Appellate Division, First Department; plus the fact that Mr. Justice Breitel accepted a post on a committee of the Association of which Mr. Halpin is chairman, even though Mr. Justice Breitel had judicial knowledge that Mr. Halpin had committed perjury; plus the fact that Presiding Justice Botein accepted the Medal of the Association from Mr. Brownell make certain that an appeal by petitioner from an order denying his motion for a change of place of trial will be denied. The New York Court of Appeals has already held in this action that the denial of a motion for a change of place of trial—even though without a change of place of trial the outcome of the action is certain regardless of merit—does not finally determine the action within the meaning of the Constitution of the State of New York.

So far as the courts of New York State are concerned, then, because petitioner lives in New York County he is not entitled to any relief against the Association. In "The Power Elite," a paper in *Problems of Power in American Democracy* (Kornhauser ed. 1957), C. Wright Mills says at 167: "The power elite * * * with the exception of the politicians among them, [are] overwhelmingly from the East." The Association can be substituted for "the East." It is the belief of the Nation that the Court is the rock upon which any power elite will break if it seeks to violate due process. There is no reason why the rule of due process should be inapplicable to petitioner because his suit is against the Association. And petitioner is denied due process if he sues in New York County—the order of Mr. Justice Capozzoli granting the Association's motion for summary judgment in the previous action, in clear

defiance of law, and the affirmance without opinion by the Appellate Division, First Judicial Department, have proved that conclusively.

The effect of the Association upon the three national legal-judicial associations.

Herbert Brownell, Esq., Orison S. Marden, Esq., and Norris Darrell, Esq., respectively president of the American Judicature Society, the American Bar Association, and the American Law Institute, the three national legal-judicial associations, are members of the small group of conscienceless[1] men who control the respondent Association.[2]

Their conduct, detailed below, shows that they consider themselves free from the rules of honorable conduct that traditionally bind the bar. This is perhaps to be expected, for to their predecessors in control of the Association a good judge was a judge subservient to them. For example, on January 18, 1923, Mr. Hilles, Chairman of the Finance Committee of the Republican National Committee, wrote Mr. Chief Justice Taft about them when he was seeking a New York candidate to succeed Mr. Justice Pitney on the Court:

> "I confess that I have been somewhat disillusioned these last few weeks as to the pure patriotism of several tremendously successful and conspicuous mem-

---

[1] The adjective "conscienceless" will be supported by the material under this heading.

[2] Edward N. Costikyan, Esq., a partner in Paul, Weiss, Rifkind, Wharton & Garrison, one of the so-called Wall Street law firms, and a member of the Association, says of the Association in *Behind Closed Doors* (1966) 205: "Today twenty or thirty law firms between them dominate the Bar Association." He also says at 184-5, of the selection by the Association of judicial candidates: "I have little confidence in the appraisals of that organization."

> bers of the Bar, because I have found that the candidates whom they were supporting aggressively are men who have heretofore been very useful to them, and who would be expected to further matters which are of tremendous concern to them and to their clients." (W. F. Murphy, "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments," *The Supreme Court Review* 1961, 159 at 182.)

Mr. Hilles, considering his office, could not have been an innocent, and yet he was surprised at the improper attitude of the leaders of the New York bar toward the bench.

(a) The American Judicature Society

After the petition for certiorari was docketed, Herbert Brownell, Esq., became president of the American Judicature Society. Since neither in petitioner's earlier action against the Association (certiorari denied, 376 U. S. 909 (1964)), nor in this action has there been denial of petitioner's charge of perjury by Mr. Brownell in the earlier action, which was to restrain the Association from continuing to collect an increase in dues obtained through the use of a materially false financial statement, it must be accepted that the charge of perjury by Mr. Brownell is true. One of the three national legal-judicial associations is therefore headed by a man lacking the moral qualifications to be a member of the bar.

(b) The American Bar Association

After the petition was docketed Orison S. Marden, Esq., became president of the American Bar Association. Like Mr. Brownell, Mr. Marden lacks the moral qualifications to be a member of the bar. Petitioner will not discuss Mr.

Marden's attempt as president of the respondent Association to obtain a $10,000 retainer from New York State for the judges of the United States Court of Appeals for the Second Circuit after they reversed the District Court in *Dulles* v. *Johnson*, 237 F. 2d 362 (December 1959), to hold, on the basis of a false brief filed by the Association, that bequests to the Association are deductible for estate tax purposes, since that has already been discussed in the petition.

Petitioner does refer to the allegations of his verified complaint, pp. 29-37 of the Record. Paragraph 13, p. 31, says that petitioner was informed by the committee on grievances of the Association that a complaint had been made against him because of his conduct at the October 1957 meeting. Petitioner at that time had objected to the falsification of the minutes of the preceding (May 1957) meeting by Louis M. Loeb, Esq., the president, so as to remove from discussion at the October meeting the fact that a materially false financial statement had been used to obtain an increase in dues. Paragraph 14 says that the only information as to the complaint the committee would give petitioner, in answer to his written inquiry, consisted of conclusory statements, such as that plaintiff had been offensive in his remarks addressed to the president (Mr. Loeb) and had impugned the integrity of the books and records of the Association. Paragraph 15 says that petitioner refused to appear before the committee unless factual allegations were first made. Paragraph 16 says that the committee refused to make any factual allegations in writing, but offered to play back for petitioner a tape recording of the meeting. Paragraph 17 says that petitioner again offered to answer factual allegations, but refused to answer conclusory statements. Paragraph 18

says that on February 24, 1958, Albert R. Connelly, Esq., chairman of the executive committee of the Association, wrote petitioner that the executive committee had censured petitioner for his conduct at the March, May, and October 1957 meetings. Since no complaint had been made as to the March and May meetings the censure as to those meetings was a violation of the by-laws; petitioner had not even been told that there was any objection to his conduct at the March and May meetings.

Thus because petitioner refused to appear before a hostile committee of the Association—a committee appointed by the president, Louis M. Loeb, whom the petitioner on the floor, at the October 1957 meeting, had rightly accused of grossly dishonorable conduct—unless factual allegations were made, something any competent lawyer would insist upon, he was censured in his absence not only for his conduct at the October 1957 meeting but also, without any warning to him, for his conduct at the March and May 1957 meetings, against which no complaint had been made.

The executive committee, by their censure of petitioner, knowing that their conduct was in violation of the by-laws and of due process and was bound to be harmful to petitioner, both financially and professionally, showed themselves morally unfit. Mr. Marden was a member of that committee.

Paragraph 19, p. 32, says that on March 10, 1958, petitioner wrote Mr. Connelly that the entire proceeding against him had been disorderly and with a complete disregard for rules of procedure and the by-laws of the Association, and that in its letter of censure the executive committee had even censured him for his conduct at the

March 1957 and May 1957 meetings, although no complaint had ever been filed against him as to those meetings, and under the by-laws the executive committee could not censure him as to those meetings. Petitioner demanded that the entire censure, which was unlawful, be expunged.

Paragraph 20 says that the executive committee refused to expunge the censure.

Paragraph 21 says that on October 14, 1959, petitioner wrote Orison S. Marden, Esq., then chairman of the executive committee, demanding that the censure be expunged. Paragraph 22 says that the request was denied. Mr. Marden, who had been a member of the executive committee before the false financial statement was used and until after he wrote the refusal to expunge the censure was aware that there was no basis for any part of the censure, and that there could be none for the two meetings as to which no complaint had been made against petitioner. His conduct was dishonorable and showed him lacking in the moral qualifications required of a lawyer. (Mr. Halpin in his affidavit, p. 7 of the Record, first full paragraph, says that this Court, at 376 U. S. 909, denied certiorari in petitioner's previous action against the Association. Page 24 of the record in that case shows that Mr. Marden signed the materially false financial statement and was a member of the executive committee at that time.)

A man who, like Mr. Marden, will violate a position of trust so that he and the rest of the small group that control the Association can have larger sums at their disposal is morally unfit to be a member of the bar, let alone president of the American Bar Association. Even graver is the fact that he knowingly injured petitioner financially and professionally by the unlawful censure, and later by re-

fusing to remove the censure, even though he knew that petitioner's conduct had at all times been proper and that petitioner's charges were justified.

(c) The American Law Institute

Norris Darrell, Esq., a former vice president of the Association, is president of the American Law Institute. The petition showed, and the respondents' brief did not deny, that he perpetrated a fraud upon this Court and defrauded the Treasury of a substantial sum of money.

Since the three national legal-judicial associations are controlled by the small group of conscienceless men that control the Association, it is correct to say that justice itself is being infected by a legal group more dangerous to the public weal than is the Mafia.

CONCLUSION

Petitioner is an officer of the Court. It is his duty to protect the Court when it is unjustly attacked. But it is a poor rule that does not cut both ways. Petitioner has suffered great financial and professional loss because of the unlawful censure by the executive committee of the Association; and he has suffered greater financial and professional loss because he sought by suit brought more than two years after the censure to annul the effect of the censure by showing that his conduct was correct—a suit that failed only because the Supreme Court, New York County, was subservient and the Appellate Division, First Judicial Department, compliant to the Association.

Petitioner brought this action in Kings County, which is part of the City of New York. For Mr. Tondel, attorney

for the respondents, and for Mr. Halpin, of counsel here and attorney in the state courts, the Supreme Court, Kings County, is about as convenient as the Supreme Court, New York County, and the Appellate Division, Second Judicial Department, is much more convenient than is the Appellate Division, First Judicial Department.

This Court has repeatedly emphasized the need for the rule of law. But if this Court denies the petition for rehearing when the record shows clearly that if petitioner tries this action in New York County he will lose, regardless of the merits of his action, a loss which will be costly to petitioner financially and professionally, the Court as to this petitioner makes a mockery of the rule of law.

The Court in deciding whether to grant certiorari must also take into consideration the fact that the three national legal-judicial associations are headed by men (all members of the small group that control the Association) against whom petitioner, with supporting evidence, has made charges of moral unfitness, including the perpetration of a fraud upon this Court and defrauding the Treasury of a large amount.

Respectfully submitted,

EDWARD T. ROEHNER
Attorney for Petitioner

Dated: October 28, 1966.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

EDWARD T. ROEHNER